

Office of the Secretary, HUD

§ 15.301

material on HUD premises in lieu of production of copies;

(3) A limitation on the subject areas of testimony permitted;

(4) A requirement that testimony of a HUD employee be provided by deposition at a location prescribed by HUD or by written declaration or affidavit;

(5) A requirement that the parties to the legal proceeding agree that a transcript of the permitted testimony be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was demanded;

(6) A requirement that the requester provide the Department with a copy of a transcript of the employee's testimony free of charge; or

(7) Any other condition or restriction deemed to be in the best interests of the United States.

(d) The determination made with respect to the production of material or provision of testimony is within the sole discretion of the Secretary or General Counsel and shall constitute final agency action from which no administrative appeal is available.

§ 15.205 Method of production of material or provision of testimony.

(a) Where the Secretary or General Counsel has authorized the production of material or provision of testimony, the Department shall produce such material or provide such testimony in accordance with this section and any conditions imposed upon production of material or provision of testimony pursuant to § 15.204.

(b) In any legal proceeding where the Secretary or General Counsel has authorized the production of documents, the Department shall respond by producing authenticated copies of the documents, to which the seal of the Department has been affixed, in accordance with its authentication procedures. That authentication shall be evidence that the documents are true copies of documents in the Department's files and be sufficient for the purposes of Rule 902 of the Federal Rules of Evidence.

(c) If response to the demand is required before the determination from the Secretary or General Counsel is received, the U.S. Attorney, or such

other attorney as may be designated for the purpose, will appear or make such filings as are necessary to furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for prompt consideration. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested determination from the Secretary or General Counsel.

§ 15.206 Procedure in the event of an adverse ruling regarding production of material or provision of testimony.

If the court or other authority declines to stay the demand made in accordance with § 15.205 pending receipt of the determination from the Secretary or General Counsel, or if the court or other authority rules that the demand must be complied with irrespective of the determination by the Secretary or General Counsel not to produce the material or provide the testimony demanded or to produce subject to conditions or restrictions, the employee upon whom the demand has been made shall, if so directed by an attorney representing the Department, respectfully decline to comply with the demand. (*United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951)).

Subpart D—Production of Material or Provision of Testimony in Response to Demands in Legal Proceedings in Which the United States Is a Party

SOURCE: 72 FR 8583, Feb. 26, 2007, unless otherwise noted.

§ 15.301 Purpose and scope.

(a) This subpart contains the regulations of the Department concerning the procedures to be followed and standards to be applied when demand is issued in a legal proceeding in which the United States is a party for the production or disclosure of any material, whether provided through production of material or provision of testimony.